



Sara L. Shudofsky
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May 6, 2022

VIA ECF

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
40 Centre Street, Room 2202
New York, New York 10007

Re: *Accent Delight International Ltd. et al. v. Sotheby's et al.*, 18-cv-9011

Dear Judge Furman:

We write respectfully on behalf of Defendants Sotheby's and Sotheby's, Inc. (collectively, "Sotheby's") to provide the Court with an order recently issued by the Swiss Court in connection with Mr. Bouvier's deposition in Switzerland, and to request that the Court approve the deposition transcript that will soon be transmitted to Your Honor by the Swiss Court.

On January 25 and 26, 2022, the Swiss Court took the deposition of Mr. Bouvier. Last week, the Swiss Court issued an order noting a disagreement between the parties as to whether the transcript of the deposition should include conversations between Mr. Bouvier and his counsel in the course of the deposition. A copy of the Swiss Court's order, which Sotheby's received on April 27, is attached here as Exhibit A in its original French; we have also attached a certified English translation of the order as part of Exhibit A. We understand from Sotheby's Swiss Counsel that the Swiss Court will soon send to Your Honor the transcript of the deposition in Microsoft Word format with markups indicating the portions of the transcript containing those conversations. We understand from Sotheby's Swiss Counsel that the transcript will be deemed finalized once the Court has decided whether to accept or reject those portions.

Although Sotheby's Swiss Counsel took the position before the Swiss Court that conversations between Bouvier and his counsel should not be included as part of the transcript, Sotheby's now requests, in the interest of finalizing the transcript as quickly as possible, that the conversations be included in the official transcript, subject to any later ruling by the Court as to the admissibility of any portion of those conversations.¹

¹ Similarly, we do not think it necessary for the Court to rule at this time on the admissibility of any portion of Mr. Bouvier's written responses to the deposition

Arnold & Porter

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Accordingly, Sotheby's respectfully requests that Your Honor approve the transcript of Mr. Bouvier's deposition, inclusive of the portions reflecting conversations between Bouvier and his counsel, upon receipt of the transcript from the Swiss Court.

We thank the Court for its consideration of this request.

Respectfully submitted,

/s/ Sara L. Shudofsky
Sara L. Shudofsky

cc: All counsel of record (via ECF)

Application GRANTED. The Court reserves judgment on whether or to what extent *any* portion of the transcript, including the disputed portions, would be admissible in this case. The Clerk of Court is directed to terminate ECF No. 453.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'Jesse M. Furman', is written over the 'SO ORDERED.' text.

May 9, 2022

questions, which Mr. Bouvier submitted to the Swiss Court and which we understand the Swiss Court will also be transmitting to Your Honor. *See* Ex. A, at 4.

EXHIBIT A



République et canton de Genève
POUVOIR JUDICIAIRE
Tribunal civil

Genève, date du timbre postal

BÄR & KARRER
REÇU le

27 AVR. 2022

CR/50/2021 19 THO XCR

Tribunal de première instance
Rue de l'Athénée 6-8
Case postale 3736
CH - 1211 GENEVE 3

1211 GENEVE 3

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LAPOSTE

SOTHEY'S
c/o Me LEMBO et CONRAD HARI
Bär & Karrer SA
Quai de la Poste 12
Case postale 5056
1211 Genève 11

Réf: **CR/50/2021 19 THO XCR**
à rappeler lors de toute communication

Nous vous remettons ci-joint l'ordonnance dans la cause mentionnée sous rubrique.



République et canton de Genève
POUVOIR JUDICIAIRE
Tribunal civil

Genève, date du timbre postal

CR/50/2021 19 THO XCR

Tribunal de première instance
Rue de l'Athénée 6-8
Case postale 3736
CH - 1211 GENEVE 3

Recommandé n°
98.41.900053.52155953

SOTHEBY'S INC
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CH - 1211 GENEVE 3

Réf : **CR/50/2021 19 THO XCR**
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**ORDONNANCE
DU 20 AVRIL 2022**

Parties demanderes

ACCENT DELIGHT INTERNATIONAL LTD
c/o Me GIROUD Sandrine
Lalive SA
Rue de la Mairie 35
Case postale 6569
1211 Genève 6

XITRANS FINANCE LTD
c/o Me GIROUD Sandrine
Lalive SA
Rue de la Mairie 35
Case postale 6569
1211 Genève 6

Parties défenderesses

SOTHEBY'S
c/o Me LEMBO et CONRAD HARI
Bär & Karrer SA
Quai de la Poste 12
Case postale 5056
1211 Genève 11

SOTHEBY'S INC
c/o Me LEMBO et CONRAD HARI
Bär & Karrer SA
Quai de la Poste 12
Case postale 5056
1211 Genève 11

Ce jour, le Tribunal rend l'ordonnance suivante :

Vu la procédure opposant ACCENT DELIGHT INTERNATIONAL Ltd et XITRANS FINANCE Ltd, parties demanderes, à SOTHEBY'S et SOTHEBY'S inc, parties défenderesses, devant the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT NY.

Vu la demande d'entraide judiciaire formée par cette Cour le 9 août 2021 à l'égard des Tribunaux genevois, constituant en l'audition du témoin Yves BOUVIER.

Considérant que ce dernier a fourni, la veille de son audition prévue les 25 et 26 janvier 2022, des réponses écrites aux questions posées par la commission rogatoire.

Que lors de l'audition du témoin les 25 et 26 janvier 2022, les parties ont formulé des objections quant à la question de savoir s'il convenait de communiquer les réponses écrites du témoin au juge américain, les demanderes s'y opposant, les défenderesses sollicitant au contraire leur transmission.

Qu'en outre, par courriers du 25 mars 2022, ACCENT DELIGHT INTERNATIONAL Ltd et XITRANS FINANCE Ltd ont indiqué que les parties restaient en désaccord à propos de l'inclusion ou non "des interpellations d'Yves BOUVIER à son conseil Me Yves KLEIN durant son audition", SOTHEBY'S et SOTHEBY'S inc s'opposant à cette inclusion.

Considérant, en droit, que si l'article 9 al. 1 CLaH 70, convention applicable en l'espèce, consacre le principe de la *lex loci executionis*, à savoir que le juge requis procède en principe selon son propre droit de procédure, l'admissibilité des moyens de preuve, la valeur probante de la preuve et son appréciation restent soumises à la *lex loci processialis* (GULDENER, IZPR, p. 18 n. 7 ; HAUSER/SCHWERI, § 117 GVG, n° 16).

Qu'en conséquence, il sera laissé à l'appréciation du juge américain la question de savoir si les réponses écrites du témoin BOUVIER doivent ou non être admise au titre de preuve dans sa procédure, ainsi que celle de la retranscription des interpellations d'Yves BOUVIER à son conseil.

**Par ces motifs,
LE TRIBUNAL**

- Dit que les réponses écrites du témoin Yves BOUVIER aux questions objets de la commission rogatoire CR/50/2021 sont transmises à l'UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT NY.
- Dit qu'il sera laissé à l'appréciation du juge américain la question de savoir si les interpellations d'Yves BOUVIER à son conseil doivent ou non figurer dans les procès-verbaux.

Sophie THORENS-ALADJEM

Juge

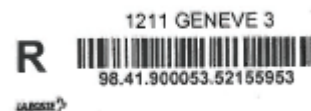
Republic and Canton of Geneva Judicial Power
Civil Court

Geneva, date of the postage stamp

Received by
BAR & KARRER on
April 27, 2022

Tribunal of First Instance
6-8 rue de l'Athénée
P.O. Box 3736
CH - 1211 GENEVA 3

CR/50/2021 19 THO XCR



SOTHEBY'S
Care of Solicitors LEMBO and CONRAD HARI
Bär & Karrer Ltd
12, Quai de la Poste
P.O. Box 5056
1211 Geneva 11

Reference: CR/50/2021 19 THO XCR
to be referenced in all communication

We are forwarding you here attached the order in the case mentioned under heading.

Republic and Canton of Geneva Judicial Power
Civil Court

Geneva, date of the postage stamp

Tribunal of First Instance
6-8 rue de l'Athénée
P.O. Box 3736
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ORDER DATED
APRIL 20, 2022

Plaintiffs

ACCENT DELIGHT INTERNATIONAL LTD
Care of Solicitor GIROUD Sandrine
Lalive SA
Rue de la Mairie 35
P.O. Box 6569
1211 Geneva 6

XITRANS FINANCE LTD
Care of Solicitor GIROUD Sandrine
Lalive SA
Rue de la Mairie 35
P.O. Box 6569
1211 Geneva 6

Defendants

SOTHEBY'S
Care of Solicitor LEMBO et CONRAD HARI
Bär & Karrer Ltd
Quai de la Poste 12
P.O. Box 5056
1211 Geneva 11

SOTHEBY'S INC
Care of Solicitor LEMBO et CONRAD HARI
Bär & Karrer Ltd
Quai de la Poste 12
P.O. Box 5056
1211 Geneva 11

On this day the Court issued the following order:

In the matter of ACCENT DELIGHT INTERNATIONAL Ltd. and XITRANS FINANCE Ltd., Plaintiffs, against SOTHEBY'S and SOTHEBY'S INC., Defendants, before the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT NY.

In the matter of the request for legal assistance made by the above Court on August 9, 2021, to the Courts of Geneva, consisting of the hearing of Yves BOUVIER as witness.

Considering that, on the eve of the hearing, which was scheduled for January 25 and 26, 2022, the latter provided written answers to the questions asked by the letter rogatory.

Considering that during the hearing of the witness on January 25 and 26, 2022, the parties objected to whether the witness' written responses should be provided to the U.S. judge, with the plaintiffs objecting and the defendants requesting, conversely, their transmission.

Considering that in addition, by letters dated March 25, 2022, ACCENT DELIGHT INTERNATIONAL Ltd and XITRANS FINANCE Ltd indicated that the parties remained in disagreement about the inclusion or not of "the interpellations made by Yves BOUVIER to his counsel Mr. Yves KLEIN during his hearing", SOTHEBY'S and SOTHEBY'S INC. opposing this inclusion.

Considering that, in law, although article 9 paragraph 1 CLaH 70, convention which is applicable to this case, provides for the principle of *lex loci executionis*, in other words that the judge proceeds in principle in accordance with their own procedural law, the admissibility of the means of proof, the probative value of the evidence and its assessment remain subject to the *lex loci processialis* (GULDENER, IZPR, p. 18 n. 7; HAUSERISCHWERI, §117 GVG, n° 16).

That, consequently, it will be at the discretion of the U.S. judge to determine whether or not the written answers, of the witness BOUVIER, should be admitted as evidence in his proceedings, as well as the question of the transcription of the interpellations made by Yves BOUVIER to his counsel.

For these reasons,

THE TRIBUNAL

- States that the written answers of the witness Yves BOUVIER to the questions contained in the letter rogatory CR/50/2021 are transmitted to the UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT NY.
- States that it will be at the discretion of the American judge to determine whether or not Yves BOUVIER's interpellations to his counsel should appear in the transcripts.

Sophie THORENS-ALADJEM
Judge

This order has been communicated for notification by the clerk's office on April 26, 2022.

Certificate of Accuracy

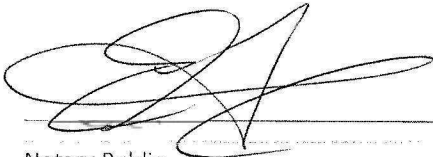
This is to certify that the attached translation, from French to English, is an accurate translation of the document:

2022-04-26 - Swiss Court Order #1 & 2022-04-26 - Swiss Court Order #2

I, Freddie Colson, declare under penalty of perjury that I understand the English language and the French language and that, to the best of my knowledge and belief, the statements in the English language in the attached translation have the same meanings as the French statements in the language in the original document, a copy of which I have examined.

Signature: Freddie Colson

This document was acknowledged before me on the 2nd day of May, 2022.



Notary Public

Elyxedy Fernandez
Notary Public, State of New York
Commission No. : 01FE6353937
Qualified in Bronx County
Commission Expires: 02/26/2025

